(27)

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI H.L. DATTU, CJ.
HON'BLE SHRI D.R. DESHMUKH, J.

Writ Appeal No.61 of 2007

APPELLANTS/ DEFENDANTS

1. Bindra Prasad, S/o Dhinnulal, Aged about 66 years, R/o Near Railway Station, Chirmiri District – Korba, Chhattisgarh
2. Om Prakash, S/o Mahangulal, Aged about 39 years, R/o Haldibadi, P.S. – Chirmiri, Teh. – Manendragarh, District – Korba, Chhattisgarh

Versus

RESPONDENTS/ PLAINTIFFS

1. Haridas, S/o Dhinnulal Aged about 71 years.
2. Raj Kumar, S/o Haridas, aged about 43 years.
3. Ashok Kumar Gupta, S/o Haridas Gupta, Aged about 41 years.

Respondents No.1 to 3 above all R/o Haldibadi, P.S. Chirmiri, Teh.- Manendragarh, District – Korba, Chhattisgarh

(Defendants)

4. Indian Oil Corporation Limited, Through its General Manager, M.P. StateOffice, 16, Arera Hills, Jail Road, Bhopal, Madhya Pradesh.
5. Sr. Divisional Manager, Retail Sales, Indian Oil Corpn. Ltd. Indian Oil Building, Rajiv Gandhi Marg, V.I.P. road, Telibandha, Raipur, Chhattisgarh
6. Shiv Prasad, S/o Mahangulal, Aged about 36 years, R/o Haldibadi, P.S. – Chirmiri, Teh. – Manendragarh, District – Korba, Chhattisgarh

Writ Appeal under Section 2(1) of Chhattisgarh High Court (Appeal to Division Bench) Act, 2006.

Present : Shri Sanjay K Agrawal, counsel for the appellants.
Shri Prateek Sharma, counsel for respondents No.1 to 3.

ORAL ORDER
(Passed on 1st May, 2007)

The following oral order of the Court was passed by

H.L. Dattu, CJ. :

The appellants before us in this appeal were the defendants in Civil Suit No.11-A/05. Respondents were the plaintiffs in the said suit. There was some delay in filing the written statement by the defendants. Therefore, the plaintiffs filed an application before the trial Court requesting the Court to reject the written statement filed by the appellants. That request of the plaintiffs is accepted by the trial Court. Aggrieved by the order so made, the defendants were before this Court in writ petition No.5372/06. Learned Single Judge by his order dated 07.11.2006 has rejected the writ petition. That is how the appellants are before us in this appeal.

(2) Shri Prateek Sharma, learned counsel appearing for respondents No.1 to 3 by way of preliminary objection would submit that the appeal filed by the appellants against the impugned order passed by the learned Single Judge is not maintainable before this Court. In aid of his submission, learned counsel brings to our notice Section 2 of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006.

(3) Shri Sanjay K Agrawal, learned counsel appearing for the appellants would submit that the petition filed before the learned Single Judge was under Articles 226/227 of the Constitution of India and therefore, the appeal filed by the defendants before this Court is maintainable.

(4) In number of cases parties before this Court would be filing writ petitions both under Articles 226 & 227 of the Constitution of India. Merely because it is stated that the petition is filed under Article 226 of the Constitution of India, it can not take the characters of a petition filed under Articles 226 of the Constitution of India. Subject matter of the petition requires to be taken note of by the Court. Admittedly, the request of the plaintiffs before the Court had been accepted by the trial Judge and thereby had rejected the request of the defendants to file written statement. If for any reason, the said order is questioned before this Court, it could only be under Article 227 of the Constitution and by no stretch of imagination it could be under Article 226 of the Constitution.

(5) Section 2 of the Act reads as under :

> **2.Appeal to the Division Bench of the High court from a Judgment or order of one judge of the High Court made in exercise of original jurisdiction –** (1) An appeal shall lie from a judgment or order passed by one Judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two Judges of the same High Court :
>
> Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.
>
> (2) An appeal under sub-section (1) shall be filed within 45 days from the date of order passed by a Single Judge :
>
> Provided that any appeal may be admitted after the prescribed period of 45 days, if the petitioner satisfies the Division Bench that he had sufficient cause for not preferring the appeal within such period.
>
> **Explanation –** The fact that the petitioner was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may by sufficient cause within the meaning of this sub-section.

(6) Statute has barred filing of any appeal before the Division Bench of this Court if the petition filed by the petitioner is under Article 227 of the Constitution of India. Since the writ petition that was filed before this Court was under Article 227 of the Constitution of India, in our opinion, in view of Section 2 of the Act, the appeal filed by the appellants is not maintainable before us. Accordingly, the appeal requires to be rejected and it is rejected. Ordered accordingly.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge